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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

IN RE: BARD IVC FILTERS PRODUCTS  
LIABILITY LITIGATION,

No. 2:15-MD-02641-DGC

**STIPULATION OF THE PARTIES  
(Bellwether Selection Process)**

Pursuant to Case Management Order No. 8, Paragraph II [Doc. 519], the parties submit their Stipulation regarding the bellwether selection process. The parties agree that the goal of the bellwether selection process is to identify cases, in a proportionate manner, which are representative of the types of cases pending in MDL 2641. To accomplish that goal, and to efficiently manage discovery for all currently pending and future cases in MDL 2641, the parties recommend establishing an **“Initial Plaintiff Pool.”**<sup>1</sup> From this **Initial Plaintiff Pool**, the parties propose selecting a total of forty-eight (48) cases, for which Plaintiff Fact Sheets (“PFS”) and Defendants Fact Sheets (“DFS”) will be required (the **“PFS/DFS Group 1”**). From the **PFS/DFS Group 1**, the parties will then select an initial discovery group (**“Discovery Group 1”**), which will consist of twelve (12) cases. From **Discovery Group 1**, six (6) bellwether cases will be selected to constitute **Bellwether Group 1**.

#### **I. Initial Plaintiff Pool**

A. The parties agree that the **Initial Plaintiff Pool** should include all cases filed and properly served upon Defendants in MDL 2641 as of April 1, 2016.

B. The parties will provide Plaintiff Profile Forms (“PPF”) and Defendants Profile Forms (“DPF”) for the **Initial Plaintiff Pool** cases. For purposes of the **Initial Plaintiff Pool** cases, the deadlines established in CMO No. 5 (Doc. 365) will be expedited. All Plaintiff Profile Forms must be served by May 1, 2016, and the Defendants Profile Forms shall be served within thirty (30) days after the date of receipt of the PPF. However, in the event that the total number of cases in the Initial Plaintiff Pool exceeds 350, the parties agree to extend the Defendants’ deadline for filing DPFs and agree to meet and confer about the length of that extension. Cases filed subsequent to the date that the Initial Plaintiff Pool is established shall continue to be governed by the

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<sup>1</sup> For purposes of this Stipulation, the **Initial Plaintiff Pool** does not include those cases which make up the group of “Mature Cases” referenced in CMO NO. 8, Para. I (C) [Doc 519], with the exception of the Conn, Milton, and Mintz cases, which the parties agree should be removed from that list. The parties will address those cases in a separate Joint Submission, as requested by the Court.

deadlines established in CMO No. 5 (Doc. 365). In order to make the process as efficient as possible, the parties agree to provide their PPFs and DPFs on a rolling basis, as they are completed.

## II. PFS/DFS Group 1

A. The parties agree that twenty (20) days after completion of the exchange of PPF/DPF for the **Initial Plaintiff Pool**, the parties shall make a simultaneous exchange of lists identifying twenty-four (24) representative cases each. Those forty-eight (48) cases shall constitute **PFS/DFS Group 1**. The lists exchanged by the parties shall be organized alphabetically by plaintiffs' last name and shall include the civil action number for each case.

B. Should Plaintiffs and Defendants select one or more of the same cases among their twenty-four (24) cases selected for **PFS/DFS Group 1**, thus resulting in a total pool of fewer than forty-eight (48) plaintiffs, the parties will alternate to identify additional plaintiffs to bring the pool to forty-eight (48), with Plaintiffs having the first selection. The parties shall make simultaneous exchange of the additional selections to complete the pool within 3 days of the initial simultaneous exchange set forth above.

## III. Plaintiff Fact Sheets and Defendants Fact Sheets

A. Pursuant to the Court's Order in CMO NO. 8, Part II, the parties have been discussing the form of their proposed Plaintiff Fact Sheets ("PFS") and Defendants Fact Sheets ("DFS"). Subject to the approval of the Court, and by the stipulation of the parties, the parties agree to submit the proposed fact sheets to the Court on or before March 18, 2016 in a joint filing. Any disagreements about the proposed Fact Sheets should be submitted to the Court at that time in a matrix format.

PFS and DFS will be completed for each case in **PFS/DFS Group 1**.

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B. Timing of Provision of PFS/DFS.

1. Plaintiffs anticipate being able to provide all PFS for the **PFS/DFS Group 1** within thirty (30) days from the final determination of the makeup of **PFS/DFS Group 1**.
2. Defendants anticipate being able to provide all DFS for **PFS/DFS Group 1** within thirty (30) days thereafter.
3. The parties agree to provide completed PFS/DFS on a rolling basis as they are completed.

C. Records Discovery in **PFS/DFS Group 1**.

1. Plaintiffs will execute and provide Defendants with records authorizations, agreed upon by the parties, which accompany the PFS form. The parties are jointly working to retain a records vendor and to have records collection protocol for the process, costs, and how those costs will be borne for the records obtained through the vendor. The parties intend to submit to the Court a stipulated proposed Case Management Order relating to Joint Records Collection within the next two weeks.
2. The parties have agreed that, pursuant to the provisions for the records vendor process, upon receipt of a plaintiff's PFS, Defendants may commence immediately to obtain records for that plaintiff.

IV. **Discovery Group 1**

A. Selection Process

1. At this time, the parties cannot accurately estimate how long it will take, with the assistance of their records vendor, to obtain and review relevant records on each plaintiff in **PFS/DFS Group 1**. This uncertainty makes it difficult for the parties to estimate a date by which they will be able to select an initial **Discovery Group** of

plaintiffs from the **PFS/DFS Group 1**. The parties currently anticipate having adequate medical records on **PFS/DFS Group 1** cases by December 1, 2016, after which they will make their respective selections of initial cases for further fact discovery.

2. By December 10, 2016, the parties shall exchange lists of ten (10) cases, selected in a manner consistent with the goal of identifying representative cases. The parties can each designate four (4) cases on those lists for automatic inclusion in Discovery Group I. After exchange of lists, the parties will meet and confer in an effort to identify from the remaining four (4) additional cases that will be included in **Discovery Group 1**. By December 17, 2016, the parties will complete their meet and confer process and submit a list of twelve (12) cases they recommend as **Discovery Group 1**.
3. If the parties are unable to agree upon the four (4) additional cases that will constitute **Discovery Group 1** with the parties' respective selections, the parties shall submit to the Court, outside of the ECF system, by the deadline set forth in Paragraph IV.A.2., or at a time directed by the Court, their proposed lists of four (4) additional cases and a Memorandum in support of their selections and in opposition, if applicable, to the opposing party's selections. Within seven (7) business days of such submission, the parties may submit a response to the opposing party's Memorandum regarding selection of cases. The parties propose that the Court then select the final four (4) cases to be included in the twelve (12) cases to constitute **Discovery Group 1**.
4. **Discovery Group 1** will be governed by a scheduling order and case management order that will be determined at the time the group is

selected. The parties will meet and confer in an effort to agree upon such scheduling order but anticipate discovery between approximately December 10, 2016 and February 10, 2017.

## V. Bellwether Group 1

### A. Selection Process

1. The initial bellwether cases for trial will be selected from **Discovery Group 1**.
2. After having met and conferred, and by March 1, 2017, the parties shall exchange lists of six (6) proposed selections from **Discovery Group 1** for bellwether plaintiffs, and order of trials. The parties will meet and confer in an effort to agree upon a group of six (6) cases to constitute **Bellwether Group 1**, which shall be done in a manner consistent with achieving the goal of proportionate identification of representative cases. If the parties are unable to agree on six (6) cases, the parties shall submit to the Court, outside of the ECF system, by March 5, 2017, their proposed lists and a Memorandum in support of their selections and in opposition, if applicable, to the opposing party's selections. Within seven (7) business days of such submission, the parties may submit a response to the opposing party's Memorandum regarding selection of cases. The parties propose that the Court then select the final group of six (6) cases to form **Bellwether Group 1**.
3. **Bellwether Group 1** will be governed by a scheduling order and case management order that will be determined at the time the group is selected. The parties will meet and confer in an effort to agree upon such scheduling order with the goal of completing remaining case-

specific discovery as close as possible to the completion of common-issue discovery.

B. Remedies for Diminishment of Discovery Group and/or Bellwether Group 1.

1. Should Plaintiffs withdraw, settle, or dismiss without prejudice a case from **Discovery Group 1**, such case will be replaced. The party that originally designated the eliminated case may select the replacement. However, if the eliminated case was one of the four (4) cases chosen by the Court, the Court will select the substitute cases from a list of four (4) cases nominated by the parties (two from Plaintiffs and two from Defendants).
2. Should Plaintiffs withdraw, settle, or dismiss without prejudice a case from **Bellwether Group 1**, such case will be replaced by a case from **Discovery Group 1** selected by the Court from a list of four (4) cases nominated by the parties (two from each side).

**VI. Selection and Discovery of Future Discovery and Bellwether Groups.**

A. When the Court deems it an appropriate time, and if the selection process, number of cases, and discovery process utilized for **Discovery Group 1** and/or **Bellwether Group 1** proves effective, the Court will employ the same method for selecting future groups of cases for discovery and trial.

B. If the Court employs the same process, the parties will select a **Discovery Group 2**, from the **Initial Plaintiff Pool**, except that the **Initial Plaintiff Pool** shall then consist of additional cases, those cases on file in this action by a date agreed upon by the parties or determined by the Court. With input from the parties, the Court will enter a discovery schedule for the **Discovery Group 2** cases.

C. If the Court employs the same process, the parties will select a **Bellwether Group 2**, from **Discovery Group 2**. With input from the parties, the Court will enter a discovery schedule for the **Bellwether Group 2** cases.

DATED this 1st day of March 2016.

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### CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2016, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/ Nancy Jo Koenes